

**House File 340 - Introduced**

HOUSE FILE 340

BY ISENHART

**A BILL FOR**

1 An Act relating to the state's workers' compensation laws by  
2 modifying alternate care procedures for medical treatment,  
3 creating registries of physicians who treat and evaluate  
4 work-related injuries, providing for the retention of  
5 a medical director, creating a state workplace injury  
6 care providers registry fund, establishing a workers'  
7 compensation advisory board, providing for and appropriating  
8 fees, and including effective date provisions.  
9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 85.27, subsection 4, Code 2011, is  
2 amended by striking the subsection and inserting in lieu  
3 thereof the following:

4 4. a. For purposes of this section, the employer is  
5 obligated to furnish reasonable services and supplies to  
6 treat an injured employee and has the right to predesignate  
7 the initial provider of medical care. Upon receiving  
8 notification of an injury, the employer is also obligated  
9 to provide the injured employee with written information on  
10 the state's workers' compensation laws, including the rights  
11 and responsibilities of the employee and the employer and to  
12 document in writing that the employee received the information  
13 in a timely manner. The commissioner shall provide, by  
14 administrative rule, the format, content, and procedure for the  
15 predesignation of the initial provider of medical care by the  
16 employer and the provision of this information to the injured  
17 employee.

18 (1) The employer shall promptly provide medical care for  
19 the injury and may predesignate a licensed physician to treat  
20 the injury and any condition the physician believes is causally  
21 related to the injury. If the employer has not predesignated  
22 a licensed physician to treat the injury and any condition  
23 causally related to the injury, the employee may designate a  
24 licensed physician of the employee's choosing to provide that  
25 treatment.

26 (2) The employer may predesignate a physician listed in the  
27 state registry of workplace injury care providers, as provided  
28 in section 85.73, to treat the injury and any condition  
29 causally related to the injury.

30 (3) The physician predesignated by the employer or  
31 designated by the employee shall be authorized by the employer  
32 to treat the injury at the employer's expense in any manner  
33 deemed appropriate by the physician, without a requirement of  
34 preapproval for such referrals by the employer, by an agent or  
35 representative of the employer, or the employer's insurer.

1 (4) The physician predesignated by the employer or  
2 designated by the employee shall be authorized to make  
3 referrals to other physicians, therapists, or health care  
4 providers of specialized services at the employer's expense  
5 without a requirement of preapproval for such referrals by the  
6 employer, an agent or representative of the employer, or the  
7 employer's insurer.

8 b. The physician predesignated by the employer or designated  
9 by the employee to treat the injured employee shall provide  
10 ongoing written documentation of the physician's opinions,  
11 treatment recommendations, and care plan to the employee. Such  
12 documentation shall indicate whether or not the physician's  
13 opinions, treatment recommendations, and care plan are in  
14 accord with the most recent edition of either the official  
15 disability guidelines and treatment guidelines in workers'  
16 compensation published by the work loss data institute or the  
17 American college of occupational and environmental medicine  
18 practice guidelines published by the American college of  
19 occupational and environmental medicine, and if so, shall cite  
20 the appropriate guidelines.

21 c. (1) If an employee receives treatment for an injury  
22 from a physician predesignated by the employer and prior to  
23 an evaluation of permanent disability by that predesignated  
24 physician, the injured employee may be examined by and obtain a  
25 second opinion, treatment recommendations, or a care plan from  
26 another licensed physician of the employee's choosing. The  
27 employee may request and the employer shall pay the reasonable  
28 costs associated with this examination, including reimbursement  
29 for transportation expenses incurred by the employee for  
30 the examination. The employee shall notify the physician  
31 predesignated by the employer that the employee is consulting  
32 with another physician of the employee's choosing.

33 (2) If an employee receives treatment for an injury from  
34 a physician designated by the employee, the employer is not  
35 responsible for the costs of obtaining a second opinion,

1 treatment recommendations, or a care plan from an additional  
2 licensed physician of the employee's choosing.

3 *d.* If the employer or employee has reason to be dissatisfied  
4 with the care of a treating physician predesignated or  
5 designated by the other party or with any referral made by that  
6 physician, the employer and employee may mutually agree upon  
7 alternate care.

8 *e.* If the employer and employee cannot agree on alternate  
9 care, either the employer or employee may notify an insurance  
10 claims specialist within the division of workers' compensation,  
11 who shall, within five working days schedule a conference  
12 between the employer and employee by any reasonable manner  
13 available to review the basis for dissatisfaction and provide  
14 an advisory opinion to resolve the medical care dispute.

15 *f.* If, following the conference with the insurance claims  
16 specialist, the employer and employee cannot agree on such  
17 alternate care, the workers' compensation commissioner  
18 may, upon application and reasonable proof of the necessity  
19 therefor, allow and order alternate care.

20 (1) The employee is responsible to make the application  
21 for alternate care and to provide reasonable proof for the  
22 necessity of alternate care if all of the following actions  
23 occurred:

24 (a) The employer provided written information about the  
25 state's workers' compensation laws as provided in paragraph  
26 "a".

27 (b) The employer predesignated a treating physician listed  
28 on the state registry of workplace injury care providers as  
29 provided in paragraph "a", subparagraph (2).

30 (c) The treating physician predesignated by the employer  
31 provided written documentation of the physician's opinions,  
32 treatment recommendations, and care plan to the employee along  
33 with a citation to appropriate treatment guidelines as provided  
34 in paragraph "b".

35 (2) The employer is responsible to make the application

1 for alternate care and to provide reasonable proof for the  
2 necessity of alternate care if any of the actions specified in  
3 subparagraph (1) did not occur or if the employee designated  
4 the treating physician to treat the injury.

5 (3) The commissioner shall not be bound by the advisory  
6 opinion of the insurance claims specialist. Upon application,  
7 the workers' compensation commissioner shall conduct a hearing  
8 in any reasonable manner to effectuate a prompt resolution of  
9 the alternate care dispute. The commissioner shall issue a  
10 decision within ten working days of receipt of an application  
11 for alternate care.

12 (4) The employer or its insurer is liable for the costs of  
13 all medical care provided by a physician predesignated by the  
14 employer or designated by the employee pursuant to paragraph  
15 "a", subparagraph (1), or from referrals from the predesignated  
16 or designated physician, and shall hold the employee harmless  
17 for the cost of care by the predesignated or designated care  
18 providers.

19 (5) In an emergency, the employee may choose the employee's  
20 care at the employer's expense, provided the employer or the  
21 employer's agent cannot be immediately contacted to indicate  
22 who the employer has predesignated as a treating physician.

23 (6) The employer shall notify an injured employee of the  
24 employee's ability to contest the employer's choice of the  
25 predesignated treating physician or other provider of medical  
26 care as part of the information given to the employee as  
27 required under paragraph "a".

28 g. (1) The employer has the right to request an employee  
29 to submit, as often as is reasonable and at a reasonable time  
30 and place, to an examination by a licensed physician chosen  
31 by the employer for any purpose relevant to the employer's  
32 duties to provide benefits to the employee under this chapter,  
33 or chapters 85A, 85B, and 86. If the employer makes such a  
34 request to an employee in writing and offers to advance or  
35 reimburse the employee's transportation expenses incurred

1 in traveling to and from the place of the examination, the  
2 employee shall submit to the examination.

3 (2) Each time that an employee is requested to and submits  
4 to an examination requested by the employer as provided in  
5 subparagraph (1), the employee has the right to be examined by  
6 a licensed physician chosen by the employee for any purpose  
7 relevant to the employer's duties to provide benefits to the  
8 employee as described in subparagraph (1).

9 (3) Each time that an employer obtains an evaluation of  
10 an employee's permanent disability by a physician chosen  
11 by the employer, if the injured employee believes that the  
12 evaluation of the extent of the employee's permanent disability  
13 is too low, the employee may obtain a subsequent examination  
14 and evaluation of the employee's permanent disability by a  
15 physician of the employee's choice. The physician chosen by  
16 the employee has the right to confer with and obtain sufficient  
17 medical history of the employee from the physician who examined  
18 the employee on behalf of the employer to make a proper  
19 evaluation of the employee's permanent disability.

20 (4) The employer shall promptly pay the costs of any  
21 examination obtained pursuant to this paragraph "g", or if  
22 necessary to obtain the examination, advance the costs of  
23 the examination, and pay the employee's reasonably necessary  
24 transportation expenses incurred in traveling to and from the  
25 place of any examination and shall hold the employee harmless  
26 for the cost of all examinations and medical care provided  
27 pursuant to this paragraph "g" as well as the employee's  
28 reasonably necessary transportation expenses.

29 **Sec. 2. NEW SECTION. 85.73 State workplace injury care**  
30 **providers — registry — fees.**

31 1. The workers' compensation commissioner shall establish  
32 and maintain a registry of physicians licensed in the state  
33 that offer or provide treatment of work-related injuries.

34 2. The commissioner shall, by administrative rule,  
35 establish requirements for a physician to be listed on the

1 registry and establish a registration fee.

2 3. This section shall not be construed to require a  
3 physician to be listed on the registry in order to offer or  
4 provide treatment of work-related injuries.

5 4. This section shall not be construed to prohibit an  
6 employer from predesignating or an employee from designating a  
7 physician to provide treatment of a work-related injury who is  
8 not listed on the registry.

9 Sec. 3. NEW SECTION. 85.74 **Independent medical evaluations**  
10 **— provider — registry — fees.**

11 1. The commissioner shall establish and maintain a separate  
12 registry of licensed physicians trained to perform independent  
13 medical evaluations and to issue impairment ratings of injured  
14 employees.

15 2. The commissioner shall establish, by administrative  
16 rule, minimum training requirements for a physician to be  
17 listed on the registry and establish a registration fee.

18 3. The commissioner shall also provide by administrative  
19 rule that a physician must be listed on the registry in order  
20 to perform independent medical evaluations and issue impairment  
21 ratings of injured employees in this state. The commissioner  
22 may prohibit an employer or employee from using an independent  
23 medical evaluation or an impairment rating of an injured  
24 employee from a physician who is not listed on the registry  
25 as evidence at a hearing to determine benefits under Iowa's  
26 workers' compensation laws.

27 Sec. 4. NEW SECTION. 85.75 **Fees appropriated.**

28 All fees collected pursuant to sections 85.73 and 85.74  
29 shall be credited to the state workplace injury care providers  
30 registry fund created in section 85.77 and are appropriated to  
31 the division to be used to carry out the provisions of sections  
32 85.73, 85.74, 85.76, and 85.78, including but not limited  
33 to establishing and maintaining the registries described in  
34 sections 85.73 and 85.74, retaining a medical director as set  
35 forth in section 85.76, and providing for the expenses of the

1 workers' compensation advisory board created in section 85.78.

2 Sec. 5. NEW SECTION. 85.76 **Medical director.**

3 The workers' compensation commissioner may retain the  
4 services of a medical director to assist the division of  
5 workers' compensation in advancing occupational health in Iowa  
6 and to advise the commissioner on how to successfully apply and  
7 administer the state's workers' compensation laws, including  
8 assessments of the use of evidence-based care in treating  
9 work-related injuries.

10 Sec. 6. NEW SECTION. 85.77 **State workplace injury care  
11 providers registry fund.**

12 1. A state workplace injury care providers registry fund  
13 is created in the state treasury as a separate fund under the  
14 control of the division of workers' compensation. All moneys  
15 appropriated or transferred to the fund shall be credited to  
16 the fund. All moneys deposited or paid into the fund shall  
17 only be appropriated to the workers' compensation commissioner  
18 to be used for the purposes set forth in sections 85.73, 85.74,  
19 85.75, and 85.76.

20 2. Notwithstanding section 8.33, any balance in the fund  
21 on June 30 of each fiscal year shall not revert to the general  
22 fund of the state, but shall be available for purposes of  
23 sections 85.73, 85.74, 85.75, 85.76, and 85.78 in subsequent  
24 fiscal years. Notwithstanding section 12C.7, interest earnings  
25 on moneys in the fund shall be credited to the fund.

26 Sec. 7. NEW SECTION. 85.78 **Workers' compensation advisory  
27 board.**

28 1. A workers' compensation advisory board is established  
29 within the division of workers' compensation. The board shall  
30 be composed of the following persons:

31 a. Two members appointed by the governor and subject to  
32 confirmation by the senate pursuant to section 2.32, one  
33 representing employers, and one representing organized labor.

34 b. Two members appointed jointly by the president and the  
35 minority leader of the senate, one representing employers, and

1 one representing organized labor.

2 c. Two members appointed jointly by the speaker and  
3 the minority leader of the house of representatives, one  
4 representing employers and one representing organized labor.

5 2. The members shall serve six-year terms beginning and  
6 ending as provided in section 69.19. However, the initial  
7 members shall be appointed to serve for less than six years to  
8 ensure members serve staggered terms. A member is eligible for  
9 reappointment. A vacancy on the board shall be filled for the  
10 unexpired portion of the regular term in the same manner as  
11 regular appointments are made.

12 3. One representative of employers and one of organized  
13 labor shall be elected as co-chairpersons by the board and  
14 shall serve for two-year staggered terms. However, one of  
15 the initial co-chairpersons shall be elected to serve for  
16 a three-year term to ensure that the co-chairpersons serve  
17 staggered terms.

18 4. Four members constitute a quorum. The affirmative vote  
19 of a majority of the voting members present as well as the  
20 approval of at least two employer representatives and two labor  
21 representatives is necessary for any substantive action to be  
22 taken by the board. The majority shall not include any member  
23 who has a conflict of interest and a statement by a member  
24 that the member has a conflict of interest is conclusive for  
25 this purpose. A vacancy in the membership does not impair the  
26 duties of the board.

27 5. The board shall meet on a regular basis and at the call  
28 of the co-chairpersons or upon the written request to the  
29 co-chairpersons of two or more members.

30 6. The members are entitled to receive a per diem allowance  
31 and actual expense reimbursement as specified in section 7E.6.

32 7. The purpose of the board is to assist the workers'  
33 compensation commissioner in the successful administration  
34 of the division of workers' compensation and to make  
35 recommendations to the governor and the general assembly

1 regarding workplace safety and improvements to the state's  
2 workers' compensation system.

3 8. The responsibilities of the board are as follows:

4 a. Monitor and support the successful implementation of the  
5 state's workers' compensation laws.

6 b. Identify problems and recommend solutions and  
7 improvements with respect to the effectiveness of the state's  
8 workers' compensation system, to the division of workers'  
9 compensation and to the governor and the general assembly.

10 c. Assist the workers' compensation commissioner in  
11 developing and implementing a program to train and certify  
12 claims adjusters for practice in Iowa.

13 d. Work with all stakeholders, including the medical  
14 director retained pursuant to section 85.76, to develop and  
15 promote a system of high-performance, transparent, accountable,  
16 and evidence-based health care for the treatment and prevention  
17 of workplace injuries.

18 e. Make recommendations to and receive recommendations from  
19 the nonprofit Iowa workers' compensation advisory committee  
20 regarding topics for stakeholder and public education with  
21 respect to the application of workers' compensation law and  
22 successful workers' compensation programs and strategies, as  
23 well as the prevention of workplace injuries.

24 Sec. 8. EFFECTIVE DATE. The following provision or  
25 provisions of this Act take effect July 1, 2012:

26 1. Section 1 of this Act amending section 85.27.

27 2. Section 3 of this Act enacting section 85.74.

28 Sec. 9. EFFECTIVE DATE. The following provision or  
29 provisions of this Act take effect January 1, 2012:

30 1. Section 2 of this Act enacting section 86.73.

31 2. Section 4 of this Act enacting section 85.75.

32 3. Section 5 of this Act enacting section 85.76.

33 4. Section 6 of this Act enacting section 85.77.

34 5. Section 7 of this Act enacting section 85.78.

35

EXPLANATION

1 This bill relates to the state's workers' compensation laws  
2 by modifying alternate care procedures for medical treatment,  
3 creating registries of physicians who treat and evaluate  
4 work-related injuries, providing for the retention of a medical  
5 director, creating a state workplace injury care providers  
6 registry fund, establishing a workers' compensation advisory  
7 board, providing for fees, and providing effective dates.

8 ALTERNATE CARE. Code section 85.27(4), concerning the  
9 provision of medical services, requires an employer to provide  
10 written information about the state's workers' compensation  
11 laws to an employee upon receiving notification that the  
12 employee has suffered a work-related injury. The employer has  
13 the right to predesignate a licensed physician to treat the  
14 injury and make necessary referrals and may predesignate a  
15 physician listed on the state registry of workplace injury care  
16 providers. If the employer does not predesignate a treating  
17 physician, the employee may designate a physician of the  
18 employee's choosing to provide the treatment.

19 The physician predesignated by the employer or designated  
20 by the employee is required to provide ongoing written  
21 documentation of the physician's opinions, treatment  
22 recommendations, and care plan to the employee along with  
23 information about whether the opinions, recommendations, and  
24 care plan are in accord with either the official disability  
25 guidelines and treatment guidelines in workers' compensation  
26 published by the work loss data institute or the American  
27 college of occupational and environmental medicine practice  
28 guidelines (ACOEM), and if so, citation to the appropriate  
29 guidelines. The employee has the right to request and obtain  
30 a second opinion from another licensed physician of the  
31 employee's choosing at the employer's expense.

32 If the employer or employee is dissatisfied with the care  
33 of a treating physician predesignated or designated by the  
34 other party or with any referral made by that physician, the  
35 employer and employee may mutually agree to alternate care. If

1 they cannot agree on alternate care, either party may notify  
2 an insurance claims specialist within the division of workers'  
3 compensation, who shall, within five working days, schedule  
4 a conference between the parties to review the basis for  
5 dissatisfaction and provide an advisory opinion to resolve the  
6 dispute. If the parties still cannot agree on alternate care  
7 after this conference, the workers' compensation commissioner  
8 may, upon application and reasonable proof of the necessity,  
9 allow and order alternate care.

10 The employee is responsible to make the application for  
11 alternate care and to provide such reasonable proof to the  
12 commissioner if the employer provided written information  
13 about the state's workers' compensation laws at the time of  
14 notification of the employee's injury, and predesignated a  
15 treating physician listed on the state registry of workplace  
16 injury care providers, and if the treating physician  
17 predesignated by the employer provided written documentation  
18 to the employee of the physician's opinions, treatment  
19 recommendations, and care plan along with citation to the  
20 appropriate treatment guidelines.

21 The employer is responsible for making the application for  
22 alternate care and providing reasonable proof if the employer  
23 and predesignated treating physician did not act as described  
24 above or if the employee designated the treating physician to  
25 treat the work injury.

26 The commissioner is not bound by the advisory opinion of  
27 the claims specialist and must conduct a hearing and issue  
28 a decision within 10 days of receipt of an application for  
29 alternate care.

30 The employer has the right to request an employee to submit,  
31 as often as is reasonable and at a reasonable time and place  
32 to an examination by a licensed physician chosen by the  
33 employer for any purpose relevant to the employer's duties to  
34 provide benefits to the employee under the state's workers'  
35 compensation laws and at the employer's expense. If the

1 employer makes the request in writing and pays all expenses,  
2 including transportation, the employee shall submit to the  
3 examination. Each time that the employer obtains an evaluation  
4 of an employee's permanent disability by a physician chosen by  
5 the employer, if the employee believes that the evaluation of  
6 disability is too low, the employee may obtain a subsequent  
7 examination and evaluation by a physician of the employee's  
8 choosing at the employer's expense, including transportation  
9 expenses to and from the place of the examination.

10 PROVIDER REGISTRIES — FEES — MEDICAL DIRECTOR. New Code  
11 section 85.73 requires the workers' compensation commissioner  
12 to establish and maintain a registry of licensed physicians  
13 that offer or provide treatment of work-related injuries.  
14 The commissioner shall, by administrative rule, establish  
15 requirements for a physician to be listed on the registry and  
16 establish a registration fee. The provision shall not be  
17 construed to require a physician to be listed on the registry  
18 in order to offer or provide treatment of work-related injuries  
19 or to prohibit an employer or employee from predesignating or  
20 designating a physician to provide treatment who is not listed  
21 on the registry.

22 New Code section 85.74 requires the commissioner to  
23 establish and maintain a separate registry of licensed  
24 physicians trained to perform independent medical evaluations  
25 and to issue impairment ratings of injured employees. The  
26 commissioner shall establish, by administrative rule, minimum  
27 training requirements for a physician to be listed on the  
28 registry and establish a fee. A physician must be listed  
29 on the registry in order to perform independent medical  
30 evaluations and issue impairment ratings of injured employees  
31 in this state. The commissioner may prohibit an employer  
32 or employee from using an independent medical evaluation or  
33 impairment rating of an injured employee from a physician who  
34 is not listed on the registry as evidence at a hearing to  
35 determine benefits under Iowa's workers' compensation laws.

1 New Code section 85.76 authorizes the commissioner to  
2 retain the services of a medical director to assist the  
3 division of workers' compensation in advancing the field of  
4 occupational health in Iowa and to advise the commissioner on  
5 how to successfully apply and administer the state's workers'  
6 compensation laws.

7 STATE WORKPLACE INJURY CARE PROVIDERS REGISTRY FUND. All  
8 registration fees collected pursuant to new Code sections 85.73  
9 and 85.74 shall be credited to the state workplace injury care  
10 providers registry fund created in new Code section 85.77 and  
11 are appropriated to the division of workers' compensation by  
12 new Code section 85.75 to carry out the provisions of new Code  
13 sections 85.73, 85.74, 85.75, and 85.76 including establishing  
14 and maintaining the two physician registries, retaining  
15 a medical director, and for the expenses of the workers'  
16 compensation advisory board created in new Code section 85.78.

17 WORKERS' COMPENSATION ADVISORY BOARD. New Code section  
18 85.78 establishes a workers' compensation advisory board within  
19 the division of workers' compensation that is composed of six  
20 members, three representing employers and three representing  
21 organized labor. The governor appoints two of the members,  
22 the president and the minority leader of the senate jointly  
23 appoint two members, and the speaker and the minority leader  
24 of the house of representatives jointly appoint two members.  
25 The members serve six-year staggered terms. The purpose of  
26 the board is to assist the workers' compensation commissioner  
27 in the successful administration of the division of workers'  
28 compensation and to make recommendations to the governor  
29 and the general assembly regarding workplace safety and  
30 improvements to the state's workers' compensation system.

31 EFFECTIVE DATES. The sections of the bill creating the  
32 provider registry for treatment of work injuries, the provider  
33 registry fund, the position of medical director, and the  
34 advisory board, and appropriating fees, take effect January 1,  
35 2012. The sections of the bill pertaining to alternate care

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1 procedures and required registration of physicians performing  
2 independent medical evaluations and impairment ratings take  
3 effect July 1, 2012.